

OCT 6 1976

MICHAEL RODAK, JR., CLERK

No. 76-79

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**In the Supreme Court of the United States**

OCTOBER TERM, 1976

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FREDERICK W. WOLF, PETITIONER

v.

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE EIGHTH CIRCUIT*

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**MEMORANDUM FOR THE UNITED STATES IN OPPOSITION**

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ROBERT H. BORK,  
*Solicitor General,  
Department of Justice,  
Washington, D.C. 20530.*

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Petitioner contends that his conviction for unlawful receipt of a firearm was based on legally insufficient evidence because receipt and venue were allegedly established solely by an uncorroborated admission.

After a non-jury trial in the United States District Court for the Eastern District of Missouri, petitioner, a previously convicted felon, was convicted of receiving a .38 caliber Smith & Wesson revolver that had been transported in interstate commerce, in violation of 18 U.S.C. App. 1202(a). He was sentenced to two years' imprisonment and a \$5,000 fine. The court of appeals affirmed (Pet. App. A; 535 F. 2d 476).

1. The undisputed evidence showed that on March 16, 1975, during a search of petitioner's residence pursuant to a warrant, St. Louis police officers found several firearms (Tr. 19, 22-23, 29, 48-49, 63-64). Petitioner

was advised of his *Miranda* rights and then admitted that the weapons were his (Tr. 20, 23, 48-49). A woman who lived with petitioner thereupon exclaimed (Tr. 49): "You can't claim those weapons, you'll get in trouble with them. They're mine." Petitioner then told the officers that he was a convicted felon (Tr. 23).

Petitioner was arrested and taken to the police station, where he was again advised of his rights. A check of the serial numbers of the firearms revealed that one of them,<sup>1</sup> the .38 caliber Smith & Wesson revolver at issue here, had been reported stolen (Tr. 25-26, 52). When the officers informed petitioner that the firearm had been stolen, he replied (Tr. 27-29, 43): "I bought that gun from a [man] here in St. Louis on the street."

At trial, the government established that between 1953 and 1965 petitioner had been thrice convicted of felonies: twice of burglary and once of murder (G. Ex. 1). The owner of the Smith & Wesson revolver testified that it had been stolen from his home in Arkansas on March 10, 1973 (Tr. 69-72).

2. The offense of which petitioner has been convicted has three elements: (1) receipt of a firearm, (2) in or affecting interstate commerce, (3) by a person who has previously been convicted of a felony (18 U.S.C. App. 1202(a)). Petitioner makes no claim regarding the latter two elements (there was ample evidence of both, see text, *supra*). He does assert, however, that there was no independent or corroborative evidence of his

<sup>1</sup>Unlawful receipt of a second firearm, a .22 caliber Derringer pistol, was also charged in the indictment, but the district court ruled that the government's case failed to prove that the receipt had taken place within the five year statutory period of limitations (18 U.S.C. 3282), and it accordingly acquitted petitioner on that charge (405 F. Supp. 731).

admission that he received the firearm and that he received it in the Eastern District of Missouri. This assertion is belied by the record.

The "corroboration rule" requires that "[a]ll elements of the offense must be established by independent evidence or corroborated admissions" (*Smith v. United States*, 348 U.S. 147, 156). As to the receipt element of the crime in this case, the government's eyewitness testimony that petitioner possessed the firearm in his home in St. Louis constituted ample independent evidence corroborating petitioner's admission that he received the firearm (*United States v. Brown*, 472 F. 2d 1181, 1182 (C.A. 6)).

Assuming that the "corroboration rule" applies to proof of venue,<sup>2</sup> this same testimony also tended independently to show receipt in the Eastern District of Missouri and thus corroborated petitioner's admission of that fact. Petitioner's admission that he bought the firearm in St. Louis was therefore properly considered evidence both of his having received the firearm and of his having received it in the Eastern District of Missouri.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,  
Solicitor General.

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<sup>2</sup>The corroboration rule is premised on a concern that a defendant's own confession, without more, is insufficiently reliable evidence upon which to base a conviction. *Smith v. United States*, *supra*, 348 U.S. at 152-153. This concern is inapplicable to proof of venue, which is not an element of the offense necessary to be proved beyond a reasonable doubt (as petitioner concedes, Pet. 7), but a geographical limitation (albeit of constitutional dimension, see United States Constitution, Sixth Amendment) on the power of individual district courts to adjudicate controversies within the jurisdiction of the federal courts.